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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JOSE SAUCEDA-CONTRERAS, Defendant and Appellant.	G041831 (Super. Ct. No. 07NF0170) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Richard F. Toohey, Judge. Affirmed.

Diane Nichols, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Lynne G. McGinnis and Marilyn L. George, Deputy Attorneys General, for Plaintiff and Respondent.

Jose Sauceda-Contreras appeals from a judgment after a jury convicted him of first degree murder. Sauceda-Contreras argues: (1) the trial court erroneously admitted his statements to police in violation of the Fifth Amendment pursuant to *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*); (2) the court erroneously denied his suppression motion because there were not sufficient exigent circumstances; (3) insufficient evidence supports his conviction for premeditated and deliberate murder; (4) CALCRIM No. 362 created an impermissible inference of guilt; and (5) there was cumulative error. Sauceda-Contreras also asks this court to review sealed medical and police records to determine whether they contain any discoverable information.

In our prior nonpublished opinion *People v. Sauceda-Contreras* (G041831, Feb. 16, 2011), we concluded the trial court admitted Sauceda-Contreras's statements in violation of *Miranda*, and thus, we did not address his other contentions. In *People v. Sauceda-Contreras* (2012) 55 Cal.4th 203 (*Sauceda-Contreras*), the California Supreme Court disagreed. The Supreme Court's decision dealt solely with the *Miranda* issue. As we explain below, none of Sauceda-Contreras's other contentions have merit, and we affirm the judgment.

FACTS

One afternoon, Alondra Gaona Gutierrez and her husband, Pascuel Rivera Rodriguez, heard arguing at their neighbor's house. Gutierrez heard a woman say, "if he was unable to get the money to give her, . . . let her go and get the money." Gutierrez heard a bang, like a person hitting a wall, and she heard the woman say, "if this was all that he had[,] to give her more until he got tired." Gutierrez heard the woman crying.[1]

The next morning, Gutierrez saw smoke and smelled burning hair, and she called for Rodriguez, who was in the garage. Ten minutes later, Gutierrez smelled

[1] Gutierrez told police the woman sounded like she was outside, but at trial she testified the woman sounded to be inside and the man outside.

burning flesh. She climbed a short playground ladder and saw smoke coming from the neighbor's backyard. Gutierrez climbed a taller ladder and saw a large metal trash can with what looked like a black ball protruding from the top. Flames and smoke were billowing from the trash can that was sitting on a concrete slab. Rodriguez arrived and stood next to Gutierrez. A man, later identified as Sauceda-Contreras, poured liquid into the trash can and when the flames increased, Sauceda-Contreras backed away. There was a mattress propped against the wall to one side of the trash can and a Jacuzzi cover on the other side of it. Gutierrez saw Sauceda-Contreras bend what appeared to be an arm and push it into the trash can.

Rodriguez got into his truck and drove around the block to get the address to call the fire department. Rodriguez saw Sauceda-Contreras look at him from behind a car parked in the driveway. Rodriguez drove home and called 911. When the firefighters arrived, Rodriguez, who was standing on a ladder, saw Sauceda-Contreras throw the mattress on top of the burning trash can.

Anaheim Firefighter Kevin Harris and three colleagues dressed in yellow "turnouts" and helmets responded to the call to investigate a "miscellaneous" fire. When they arrived, they did not see fire or smoke so they walked through an open gate along the side of the house where they met Sauceda-Contreras. Harris asked him if there was a fire, and he nervously said there was a fire but it was out. Harris smelled gasoline and saw a metal trash can with smoke coming from it and a mattress laid over the top. Harris asked Sauceda-Contreras what was burning, and he said, "[N]othing[,] [n]o problem[,] [n]o problem, sir." Harris walked towards the trash can, and Sauceda-Contreras put his hands on Harris's chest to stop him. Harris stopped and saw a "slight flicker of flame" from the trash can. Harris called to his captain and said he needed police assistance. As the firemen and Sauceda-Contreras walked towards the front of the house, Sauceda-Contreras stated he bought a pig in Indio and he was cooking it in the trash can for a party.

When the police arrived, Harris and a colleague went to the backyard and removed the mattress and found a charred towel covering the trash can. Harris lifted the towel and saw a human skull and burned body. The firefighters returned the towel and mattress to their original places and went to the front yard. Harris motioned to the police officer and the officer handcuffed Sauceda-Contreras.

Terri Powers-Raulston, a forensic specialist, processed the crime scene. She photographed the crime scene: a car was parked on the driveway; the bedroom, with a sliding glass door, was adjacent to the backyard; a box spring mattress partially covered a large metal trash can, and a spa cover lay nearby; and a charred piece of wood, two pairs of work gloves, a charred saucepan, a metal rod, and a bucket containing a liquid that smelled like gasoline and half a beer can were near the trash can. Inside the metal trash can, Powers-Raulston saw a charred body propped away from the can wall with a brick; the brick was from a nearby walkway. She removed a towel from the victim's head. She found a garden hose with a nozzle and the water turned on full. In a trash can located on the driveway, she found a plastic container, which smelled of gasoline and had hair attached to it. Powers-Raulston also processed the home's interior. The southeast bedroom was in disarray—the sheets were off the mattress and on a chair, and the mattress was moved off the box spring. In the bathroom across from the southeast bedroom, she saw a red stain on the bathroom floor. In the bathtub she found hair, unknown stains, and a cup. There was no evidence the bathroom door had been forced open.

Scott Flynn, a forensic specialist, photographed Sauceda-Contreras at the police station. He had injuries to the left side of his head, his nose, lip, chin, and hands. He was wearing a shirt, jeans, and a belt. The jeans and belt were booked into evidence. There was gasoline on the jeans. The belt had almost a complete tear near the belt buckle, and a diagonal line indentation approximately 11 inches in from the buckle.

Flynn took swabs of the belt for DNA analysis. Sauceda-Contreras tested negative for drugs and alcohol.

Detectives Robert Blazek and Julissa Trapp interviewed Sauceda-Contreras. Trapp, who was bilingual in English and Spanish, translated. Before the interview began, the following colloquy occurred between Blazek, Trapp, and Sauceda-Contreras:

"[Trapp]: Hello, good afternoon I am Detective Trapp.

"[Sauceda-Contreras]: Good afternoon how are you?

"[Trapp]: I'm going to translate for you okay?

"[Sauceda-Contreras]: Okay that's fine.

"[Blazek]: We'd like to talk to you.

"[Trapp]: The detective would like to speak with you.

"[Blazek]: But because you've been handcuffed and transported in a police car . . .

"[Trapp]: But because you're handcuffed and they brought you in the police car . . .

"[Blazek]: [W]e have to advise you of some rights.

"[Trapp]: I want to advise you of some of the rights you have.

"[Blazek]: Okay?

"[Sauceda-Contreras]: Okay.

"[Trapp]: You have the right to remain silent. Do you understand?

"[Sauceda-Contreras]: A huh, yes.

"[Trapp]: Whatever you say can be used against you in a court of law. Do you understand?

"[Sauceda-Contreras]: Yes.

"[Trapp]: You have the right to have a lawyer present before and during this interrogation. Do you understand?

"[Sauceda-Contreras]: Yes I understand.

"[Trapp]: If you would like a lawyer but you cannot afford one, one can be appointed to you for free before the interrogation if you wish. Do you understand?

"[Sauceda-Contreras]: Yes I understand.

"[Trapp]: Having in mind these rights that I just read, the detective would like to know if he can speak with you right now?

"[Sauceda-Contreras]: If you can bring me a lawyer, that way I I [*sic*] with who . . . that way I can tell you everything that I know and everything that I need to tell you and someone to represent me.

"[Trapp]: Okay, perhaps you didn't understand your rights. Um . . . what the detective wants to know right now is if you're willing to speak with him right now without a lawyer present?

"[Sauceda-Contreras]: Oh, okay that's fine.

"[Trapp]: The decision is yours.

"[Sauceda-Contreras]: Yes.

"[Trapp]: It's fine?

"[Sauceda-Contreras]: A huh, it's fine.

"[Trapp]: Do you want to speak with him right now?

"[Sauceda-Contreras]: Yes.

"[Trapp]: I explained to him, he said, about the attorney, I would tell you everything. I have no problem talking to you. And I said well I want to make sure that you did understand me correctly. The detective wants to know if you want to talk to him right now without an attorney present and he said yes."

The interview began. Sauceda-Contreras stated he had lived at the residence with family members about one and a half years. He worked two jobs but that day and the previous day were his days off.

Sauceda-Contreras explained that eight years prior he lived in Long Beach with Martha Mendoza and her five children. She would leave her children with him and she would find men and use drugs. He claimed she would bring men to his house when he was at work. He loved her but eventually he left her and the government took away her children. About one and a half years prior, she found him and told him she wanted to move in with him because he had a house and money. He told her no because she was never going to change. Mendoza contacted him the previous day. They argued, she scratched him, and he told her to leave. She relaxed, and they went to a video store. She seemed nervous, like she needed drugs, and he told her that he loved her, but he could not be with her. He told her that he would not give her money and to go to sleep.

Sauceda-Contreras said the next morning Mendoza was nervous and he told her that he would not give her money because he knew she would buy drugs. He stated she told him that she lost everything she had, him, her children, and her mother, and no one loved her. She did not want to be on the streets earning money to live day by day. She made him promise that when she died that he would burn her, keep her ashes, and take care of the ashes as if she were alive. Mendoza told him to buy some things for her children and tell them she left and he did not know anything else. He told her she was crazy and he continued gathering his laundry. Sauceda-Contreras claimed he had not seen her for awhile and he got nervous because she often stole things. He found her lying in the bathtub.

Sauceda-Contreras asserted he thought about calling the police but he remembered what she had told him. He thought about all the years he supported her and tried to change her. He stated it hurt him so much as he watched her burn because his life was going with her and he would never forget her. He bought her a car and opened a bank account for her, but she spent all the money and the police stopped her and found drugs. She stopped by the house a couple times a month for the past few months.

When asked, Sauceda-Contreras said Mendoza arrived the prior morning at 8:00 a.m. and she spent the night but no one saw her because he had his own bedroom and bathroom. Methamphetamine was Mendoza's drug of choice, but she did not use any that day because he would not let her. He denied drinking or using drugs, and later tested negative for both.

Sauceda-Contreras said they went to bed around 9:00 p.m. the prior night and awoke at 8:00 a.m. that morning and lay in bed until they heard everyone leave. She was very nervous and that is when she asked him to burn her. As he prepared the laundry he thought she went to take a shower because she was naked. He went to look for her because she had stolen things from him in the past. The bathroom door was open and he found her lying in the bathtub not breathing. He hit her to try to wake her up because he did not know how to resuscitate her. He said she was "cold, cold, cold." He thought she was out of his sight for approximately one and a half hours but he was not sure.

When Sauceda-Contreras said he could help the officers arrest "someone that's big," Blazek asked him how he got the scratches. He explained the prior afternoon Mendoza saw his IPod and got mad because he never bought her anything. Mendoza asked for $100 or $200 and when he refused to give it to her, she scratched him.

When Blazek asked him whether there was any medication in the bathroom, Sauceda-Contreras replied only Alka-Seltzer. He did not know how Mendoza did it, but he saw bubbles coming from her mouth and she was really cold. When Blazek said it takes more than an hour and a half to get cold, Sauceda-Contreras said there were times she was sweating and times she was cold.

Sauceda-Contreras stated that when he found Mendoza in the bathtub, he felt anger and sadness because he wasted so many years of his life on her and he loved her very much. He moved her and yelled at her to wake up. He took her out of the bathtub and hugged her. He considered calling the police but remembered what she had

told him. He told her that she was not going anywhere to do bad things and she was going to stay there with him.

Sauceda-Contreras explained he put wood in the bottom of the trash can and put Mendoza in the trash can. He used gasoline and a match to start the fire. He had gas in a can but he put gasoline into a pot to pour into the trash can. He wanted to take Mendoza out but the fire got really big. He did not burn his hands because he was wearing gloves. He heard the sirens and decided to cover her with the mattress so they would not see her. He admitted lying to the firefighters.

When Blazek told him neighbors heard him arguing with Mendoza the previous day, Sauceda-Contreras said it must have been in the afternoon but it was nothing. When Blazek told him the neighbors heard him yelling, he responded the window on the neighbor's side of the house was open. Mendoza was yelling he did not give her any money, and he told her to "shut up." He added, "Whatever happens . . . even if you judge me . . . I'm going to be at peace here because I didn't do anything to her." The argument was "small" compared to other arguments he had with her. He denied arguing with her that morning.

Blazek asked him why he waited an hour and a half if he was concerned Mendoza might steal from him. He looked for her but she just leaves. When Blazek asked him why he did not call 911, Sauceda-Contreras replied Mendoza told him not to and he was afraid. The police had never helped him before and never believed him because he cannot speak English. He did not know there were crematoriums. He repeatedly denied hitting or choking Mendoza or doing anything to cause her death.

Later, after a break, Blazek asked Sauceda-Contreras whose car was on the driveway. He responded it was his brother's car, and when asked he denied he drove the car that morning. Eventually, he stated he was not going to lie anymore and explained he moved the car onto the driveway so nobody would see what he was doing. He was concerned that if he called the police, they would think he killed Mendoza. He burned

Mendoza because she told him to. When Blazek asked him about the events that morning, Sauceda-Contreras repeated his story about gathering laundry and added details about eating and cleaning the kitchen before looking for and finding Mendoza in the bathtub. Blazek said his story did not make sense and accused him of lying. Blazek said Sauceda-Contreras had told "six different stories" and to slow down and tell the truth. Sauceda-Contreras repeated his version of the events leading to where he entered the bathroom. Blazek said Mendoza's body would not be cold in such a short time, his story made no sense, and he was lying.

Sauceda-Contreras claimed Mendoza killed herself with his belt on the bathtub faucet. He loosened the belt from her neck and tried to revive her but her body was purple and she was warm. He thought about calling the police but decided to burn her. He "scorned her real badly" before her death. He told Mendoza that he had seen her "selling herself on the streets of Long Beach" and leaving motel rooms with men. He told her that she had ruined her life and the lives of those who loved her. He admitted calling her "trash" and yelling profanities at her and this is what the neighbors heard. Mendoza was distraught and pleaded with him to hit her instead of calling her names.

Sauceda-Contreras admitted they had sexual intercourse that evening. He denied choking her with his belt. He explained "for eight years, it has hurt me to know that I'm eating . . . and know that she is out on the street doing who knows what things." Mendoza told him that morning she wanted to move in with him and he said no because he knew she would never change. He was in the country illegally and that morning Mendoza called him a "stupid Mexican" and a "wetback" and threatened to have him and his family deported. He told Mendoza to leave, she left the bedroom, and later in the bathroom, he heard her crying and what sounded like hitting. He said he gathered the laundry and cleaned the house, and "a lot of time [went] by." He repeatedly knocked on the bathroom door and window. He finally used a key to open the door.

Sauceda-Contreras insisted he did not kill Mendoza and said she was dead when he burned her. Blazek asked him how she killed herself. He responded she was lying in the bathtub and she had the belt wrapped around her neck and looped over the bathtub faucet. He said she was holding on to the long end of the belt with her hands.[2]

A felony complaint charged Sauceda-Contreras with murder (Pen. Code, § 187, subd. (a)).[3] Pursuant to section 1538.5, Sauceda-Contreras filed a motion to suppress evidence, including all physical evidence recovered from his home (metal trash can and its contents, white towel, belt, etc.), Sauceda-Contreras's statements, and law enforcement observations and photographs because there was no arrest or search warrant. At the dual suppression and preliminary hearing, Rodriguez, Harris, Officer Carlos Haynie, and Officer Michael McAlpine testified.

Rodriguez testified he smelled burning hair and skin, climbed up a ladder in his backyard, and saw Sauceda-Contreras pouring a liquid from a gallon container into a large metal trash can that contained something black that was not trash. When Sauceda-Contreras poured the liquid into the trash can, the flames rose. After Rodriguez called 911, the firefighters responded to his house and he directed them to Sauceda-Contreras's house. When Sauceda-Contreras saw the firefighters, he pushed a mattress on top of the trash can. On cross-examination, Rodriguez conceded he did not tell the 911 operator what he smelled.

Harris testified he and the other firefighters went to Rodriguez's house, and he told them his rear neighbor "was burning gasoline in a bucket." The firefighters went to Sauceda-Contreras's house, but they initially did not see any smoke or fire. The firefighters walked up the driveway and through a side gate to the backyard to look for

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[2] DVDs of the interview were played for the jury. Transcripts of the interview were provided to the jury but not admitted into evidence.

[3] All further statutory references are to the Penal Code.

the fire. Sauceda-Contreras appeared and told Harris there was a fire but "there's no problem[.]" Harris saw smoke coming from the trash can and a mattress leaning on top of it. As Harris walked towards the trash can and Sauceda-Contreras continued to tell him there was "no problem," Harris saw flames coming from inside the trash can and smelled gasoline and something burning. Harris was concerned the mattress would catch fire and spread to the house. Sauceda-Contreras prevented the firefighters from putting out the fire and repeatedly said there was "no problem[.]" The firefighters sought their captain's assistance, and they then tried to push the mattress off the trash can. Sauceda-Contreras motioned for them to stop and said, "'Please, sir, you don't want to see what's inside here.'" Harris asked the captain to call the police, and they walked to the front yard where Sauceda-Contreras told Harris he was cooking a pig. Haynie, who arrived seven to 10 minutes later, told Sauceda-Contreras to sit on the curb and told the firefighters to check on the fire. A firefighter pulled the mattress off the trash can, and Harris pulled a white towel off the top of the trash can. They saw a human body. The firefighters returned the items to where they had found them and walked to the front yard where Harris motioned to Haynie to arrest Sauceda-Contreras and told the officer what they had discovered.

Haynie testified he told Harris to extinguish the fire. He also stated that after he arrested Sauceda-Contreras, officers performed a protective sweep of the property. McAlpine prepared and obtained a search warrant.

After hearing the above testimony and considering counsels' arguments, Judge James O. Perez denied the suppression motion without comment.

An information charged Sauceda-Contreras with murder (§ 187, subd. (a)). Sauceda-Contreras renewed his suppression motion, and filed a motion to dismiss. The prosecutor opposed both motions. After considering the motions and hearing argument, Judge Richard F. Toohey denied both motions without comment.

After the trial court empanelled the jury, the trial court addressed Sauceda-Contreras's motion to exclude his statements to officers pursuant to *Miranda, supra,* 384 U.S. 436. Because the California Supreme Court has spoken on the matter (*Sauceda-Contreras, supra,* 55 Cal.4th 203), we need not provide a detailed recitation of what happened at the hearing. Suffice it to say, the trial court denied the motion to exclude his statements.

At trial, the prosecutor offered the testimony of Maria Rodriguez, Mendoza's sister. Rodriguez testified she knew Sauceda-Contreras approximately six to seven years. She stated that during the prior three years, she had heard Sauceda-Contreras threaten Mendoza on more than one occasion. One evening, within nine months of her sister's death, Mendoza spent the night at her house. Sauceda-Contreras banged on her door and when Mendoza went to speak with him, he threatened to beat up Mendoza if she did not go with him. On another occasion, Sauceda-Contreras told her that he would never leave Mendoza alone, and he would rather see her dead than lose her. On cross-examination, Rodriguez admitted that during her interview she did not tell the police Sauceda-Contreras said he would rather see Mendoza dead than lose her.

Annette McCall, a forensic scientist with expertise in DNA analysis, testified concerning the swab evidence.[4] McCall stated Sauceda-Contreras could not be excluded as a contributor to the DNA found on the car's steering wheel and Mendoza could be excluded. She also said Mendoza was a major contributor to the DNA found in the blood on the bathroom floor but Sauceda-Contreras could be excluded. Other swabs taken from the bathroom revealed Sauceda-Contreras or Mendoza were contributors to the DNA but nearly all were inconclusive. With regard to the DNA recovered from

[4] The parties stipulated the DNA profiles used as the known DNA profiles of Sauceda-Contreras and Mendoza were in fact from Sauceda-Contreras and Mendoza.

Sauceda-Contreras's belt, McCall testified to the following: Mendoza could not be excluded as a major contributor and Sauceda-Contreras could not be excluded as a minor contributor to the DNA near the belt buckle; testing on the belt's center was inconclusive; and Mendoza and Sauceda-Contreras could not be excluded as equal contributors to the DNA near the belt's end. On cross-examination, McCall testified she did not know whether the belt buckle corresponded to the labeled left or right side of the belt. She stated DNA could be transferred by touch so that it was possible for someone to hold someone's hand and transfer DNA to an object.

The prosecutor also offered the testimony of Dr. Anthony Juguilon, a forensic pathologist, who performed the autopsy. After removing Mendoza's body from the trash can, Juguilon conducted an external and internal examination, and from internal organs determined the body to be a female. During the external examination, Juguilon found significant thermal injury to the body—nearly all the skin was burned off and at some places there was burning to the bone. Mendoza's scalp had been incinerated and her skull was fractured, which is common with burn victims. She had other thermal fractures throughout her body. The eyelids, lips, and nose were incinerated, and the brain and eyes were severely damaged. Mendoza's right hand had been incinerated. During the internal examination, Juguilon found the organs to be dehydrated or desecrated. He stated that although severe thermal injuries inhibit the ability to determine a cause of death, he was fairly confident she was dead before being burnt. Juguilon ruled out as the cause of death blunt force trauma such as a gunshot or stab wound. He also ruled out natural causes as the cause of death. Because of the severe burning to the head and neck, Juguilon could not determine whether Mendoza was strangled but he could not rule it out. He explained blood and tissue samples from the brain and liver demonstrated elevated levels of methamphetamine but because the thermal injuries caused dehydration, the concentration of methamphetamine in the tissue could be altered. He stated the blood was too damaged to analyze. Juguilon could not determine Mendoza's cause of death.

On redirect examination, Juguilon testified neither he nor a toxicologist could say with any certainty what affect the thermal injuries had on the methamphetamine levels.

At the close of the prosecutor's case-in-chief, Sauceda-Contreras moved for an acquittal. The trial court denied the motion.

As relevant here, the trial court instructed the jury with CALCRIM No. 362, "Consciousness of Guilt: False Statements," as follows: "If the defendant made a false or misleading statement relating to the charged crime, knowing the statement was false or intending to mislead, that conduct may show he was aware of his guilt of the crime and you may consider it in determining his guilt. [¶] If you conclude that the defendant made the statement, it is up to you to decide its meaning and importance. However, evidence that the defendant made such a statement cannot prove guilt by itself."

The jury convicted Sauceda-Contreras of first degree murder. The trial court sentenced Sauceda-Contreras to 25 years to life in prison.

DISCUSSION

I. Miranda

In *Sauceda-Contreras, supra,* 55 Cal.4th 203, the California Supreme Court reversed our decision in our prior nonpublished opinion *People v. Sauceda-Contreras* (G041831, Feb. 16, 2011), where we concluded the trial court erred when it admitted Sauceda-Contreras's statements obtained in violation of his *Miranda* rights.

In *Sauceda-Contreras, supra,* 55 Cal.4th at page 207, the California Supreme Court explained: "[Sauceda-Contreras's] reply to the officer's inquiry was sufficiently ambiguous to justify her seeking further clarification of his intent . . . . The followup questions were not coercive, and preceded any substantive interrogation of [Sauceda-Contreras]. Under the totality of the circumstances, [Sauceda-Contreras's]

responses made clear he was willing to speak with the detective at that time without an attorney present. The record further supports the trial court's finding that his waiver of *Miranda* rights was voluntary, knowing and intelligent." Accordingly, we adopt and incorporate by reference the Supreme Court's discussion and conclusion Sauceda-Contreras's statements were properly admitted at trial. We must now address his remaining contentions.

II. Exigent Circumstances

Sauceda-Contreras contends the trial court erred when it concluded exigent circumstances justified Harris entering his property to investigate the fire in the trash can. We disagree.

The Fourth Amendment protects an individual's reasonable expectation of privacy against unreasonable intrusion on the part of the government. (*People v. Jenkins* (2000) 22 Cal.4th 900, 971.) The home itself enjoys the fullest measure of protection under the Fourth Amendment and this protection has been extended to the curtilage of the home—the area "intimately tied to the home," such as a detached garage or a fenced area immediately surrounding the home. (*United States v. Dunn* (1987) 480 U.S. 294, 301.)

When the prosecution relies on evidence obtained by law enforcement officers from a protected area such as a curtilage without a warrant, it bears "the burden of establishing either that no search occurred, or that the search undertaken by the officers was justified by some exception to the warrant requirement," such as exigent circumstances. (*People v. Camacho* (2000) 23 Cal.4th 824, 830.) "'[E]xigent circumstances' . . . include 'an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property . . . .'" (*People v. Duncan* (1986) 42 Cal.3d 91, 97 (*Duncan*).)

"[T]he exigent circumstances test involves a two-step inquiry: first, factual questions as to what the officer knew or believed and what action he took in response; second, a legal question whether that action was reasonable under the circumstances.

[Citation.] On appeal, a reviewing court must affirm the trial court's determinations of the factual questions if they are supported by substantial evidence, but must take the ultimate responsibility for deciding the legal question according to its independent judgment. [Citation.] 'As a general rule, the reasonableness of an officer's conduct is dependent upon the existence of facts available to him at the moment of the search or seizure which would warrant a man of reasonable caution in the belief that the action taken was appropriate. [Citation.] And in determining whether the officer acted reasonably, due weight must be given not to his unparticularized suspicions or "hunches," but to the reasonable inferences which he is entitled to draw from the facts in the light of his experience; in other words, he must be able to point to specific and articulable facts from which he concluded that his action was necessary.' [Citation.]" (*Duncan, supra,* 42 Cal.3d at pp. 97-98.)

One well-recognized exigent circumstance is a fire. "Our decisions have recognized that a warrantless entry by criminal law enforcement officials may be legal when there is compelling need for official action and no time to secure a warrant. [Citations.] Similarly, in the regulatory field, our cases have recognized the importance of 'prompt inspections, even without a warrant, . . . in emergency situations.' [Citations.] [¶] A burning building clearly presents an exigency of sufficient proportions to render a warrantless entry 'reasonable.' Indeed, it would defy reason to suppose that firemen must secure a warrant or consent before entering a burning structure to put out the blaze." (*Michigan v. Tyler* (1978) 436 U.S. 499, 509.)

Under the facts here, the trial court properly concluded exigent circumstances justified Harris entering the property. As to the first question, Harris had information Rodriguez called 911 and reported there was a fire in his neighbor's backyard and his neighbor was pouring gasoline in a trash can. Although Harris did not see any visible signs of fire from the street and Sauceda-Contreras assured him there was no problem, Harris continued with his duties. (*Romero v. Superior Court* (1968)

266 Cal.App.2d 714, 721-722 ["[m]embers of an organized fire department have the powers of peace officers while engaged in the performance of their duties with respect to the prevention and suppression of fires and the protection and preservation of life and property against the hazards of fire and conflagration"].) Harris walked into the backyard and saw flames coming from inside the trash can and smelled gasoline and something burning. Harris also saw a mattress leaning on top of the trash can. Sauceda-Contreras prevented first Harris, and then Harris and his captain, from extinguishing the fire and moving the mattress away from the trash can. Sauceda-Contreras first told the firefighters they did not want to see what was inside the trash can but then stated he was cooking a pig. The firefighters called for police assistance and waited until Haynie arrived and detained Sauceda-Contreras. When Harris and his colleague returned to the backyard, they made their gruesome discovery.

With respect to the second question, the firefighters' actions were certainly reasonable under the circumstances. The firefighters' initial entry was certainly reasonable as they were investigating a report of a fire in a residential area. In the backyard, Harris saw a metal trash can smelling of gasoline and emitting small flames and some smoke with a mattress lying on top of the trash can. When Sauceda-Contreras twice thwarted their efforts to extinguish the fire and gave confusing stories of what he was doing, the firefighters called for police assistance. Harris and his colleague's second entry was also reasonable under the circumstances because Harris suspected there was a potentially combustible trash can in a residential neighborhood. As Harris was under a duty to extinguish the fire, obviously he need not rely on Sauceda-Contreras's assurances everything was under control. Although there were no structures ablaze, Harris was concerned the mattress would catch fire and spread to one or more of the houses. Contrary to Sauceda-Contreras's assertion otherwise, we conclude Harris acted reasonably in not asking Sauceda-Contreras, a civilian, to move the mattress off the smoldering and dangerous trash can. We recognize we are not confronted with the most

extreme of exigencies, but considering the location and materials involved, we conclude it was reasonable for the firefighters to enter Sauceda-Contreras's property to investigate the fire.

With respect to Sauceda-Contreras's remaining contentions, we will not second-guess the policies and procedures of the fire department. True, the firefighters remained in the front yard for up to 10 minutes but they were in close proximity to the fire in case it did flare up. Additionally, although Harris testified he was not carrying a fire extinguisher, he also stated he could not remember whether his colleague had a fire extinguisher. Finally, Sauceda-Contreras makes much of the fact the firefighters left the scene how they found it. At that point, they had assessed the fire and tried to preserve the scene for further investigation. Thus, based on the record before us, we conclude the trial court properly denied Sauceda-Contreras's suppression motions.

III. Sufficiency of the Evidence-Murder with Premeditation and Deliberation

Sauceda-Contreras argues insufficient evidence supports the jury's findings he caused Mendoza's death and he acted with premeditation and deliberation. Not so.

"Review on appeal of the sufficiency of the evidence supporting the finding of premeditated and deliberate murder involves consideration of the evidence presented and all logical inferences from that evidence . . . . Settled principles of appellate review require us to review the entire record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—from which a reasonable trier of fact could find that the defendant premeditated and deliberated beyond a reasonable doubt. [Citations.] The standard of review is the same in cases such as this where the People rely primarily on circumstantial evidence. [Citation.] 'Although it is the duty of the jury to acquit a defendant if it finds that circumstantial evidence is susceptible of two interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court which must be convinced of the defendant's guilt beyond a reasonable doubt. If the

circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also be reasonably reconciled with a contrary finding does not warrant a reversal of the judgment.' [Citations.]" (*People v. Perez* (1992) 2 Cal.4th 1117, 1124.)

A. Corpus Delicti

Relying on *People v. Towler* (1982) 31 Cal.3d 105 (*Towler*), Sauceda-Contreras claims there is insufficient evidence he committed an unlawful act causing Mendoza's death. We disagree.

First degree murder requires that the killing was "willful, deliberate, and premeditated." (§ 189.) Section 20 provides, "To constitute crime there must be unity of act and intent. In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence."

"In a prosecution for murder, as in any other criminal case, the corpus delicti—i.e., death caused by a criminal agency—must be established independently of the extrajudicial statements, confessions or admissions of the defendant. [Citations.] '[I]t is likewise well settled[, however,] that . . . the prosecutor is not required to establish the corpus delicti by proof as clear and convincing as is necessary to establish the fact of guilt; rather slight or prima facie proof is sufficient for such purpose.' [Citation.] As we explained in *People v. Jacobson* (1965) 63 Cal.2d 317, 327: 'To meet the foundational test the prosecution need not eliminate all inferences tending to show a noncriminal cause of death. Rather, the foundation may be laid by the introduction of evidence which creates a reasonable inference that the death could have been caused by a criminal agency [citation] even in the presence of an equally plausible noncriminal explanation of the event. [Citations.]' The authorities also make it clear that '[t]he corpus delicti may be established from circumstantial evidence, and by the reasonable inferences to be drawn from such evidence.' [Citation.]" (*Towler, supra,* 31 Cal.3d at p. 115, italics omitted.)

In *Towler*, the trial court, sitting without a jury, found defendant guilty of second degree murder in a case where defendant was charged with the murder of the man who arranged a drug deal between undercover officers and defendant. The victim, who did not have a motor vehicle, was found in a rural area wearing the same work clothes he was wearing when he was last seen two months earlier in the company of defendant. The examining doctors could not determine the cause of death because the victim's body had deteriorated. They could conclude the victim probably was not strangled, stabbed, or shot, but they could not rule out drowning, suffocation, or a drug overdose. (*Towler, supra,* 31 Cal.3d at pp. 112-114.)

The *Towler* court rejected defendant's contention that insufficient evidence supported the conclusion the victim's death was the result of criminal agency because the medical testimony was inconclusive. The court asserted there was a considerable amount of evidence exclusive of defendant's statements from which it was reasonable to infer the victim's death was the result of criminal agency. (*Towler, supra*, 31 Cal.3d at pp. 115-116.) The court reasoned the victim was a police informant, he disappeared suddenly, he was found in a remote area and he did not have a motor vehicle, he was wearing work clothes one would not normally wear if engaged in outdoor activities, and his wallet was missing. (*Id.* at p. 116.) Although the medical evidence was inconclusive, the court noted the victim was last seen in the company of defendant. (*Ibid*.) The court concluded, "All of this evidence, of course, did not rule out the possibility that [the victim] had died from noncriminal causes. As noted, however, the corpus delicti rule is satisfied 'by the introduction of evidence which creates a reasonable inference that death could have been caused by a criminal agency . . . even in the presence of an equally plausible noncriminal explanation of the event.' [Citation.] We conclude that the evidence is sufficient to support a reasonable inference that death could have been caused by a criminal agency." (*Id.* at p. 117.)

Like *Towler*, based on the entire record here, there was evidence from which a juror could reasonably infer Mendoza died from an unlawful act. The jury heard testimony that Sauceda-Contreras threatened to harm Mendoza and that he would rather see Mendoza dead than lose her. The day before Mendoza died, neighbors heard Sauceda-Contreras and Mendoza arguing, and Sauceda-Contreras had injuries consistent with a recent altercation. Forensic testing revealed that Mendoza was a major contributor of DNA found on Sauceda-Contreras's belt. Finally, the jury heard testimony Sauceda-Contreras destroyed incriminating evidence, demonstrating his consciousness of guilt. Although this evidence did not rule out Mendoza committed suicide or overdosed on methamphetamine, the above mentioned evidence certainly created a reasonable inference Sauceda-Contreras committed an unlawful act that caused Mendoza's death.

Citing to *Towler, supra*, 31 Cal.3d 105, Sauceda-Contreras spends much time discussing Juguilon's testimony and the fact he could not rule out suicidal hanging or methamphetamine overdose as the cause of death. Sauceda-Contreras asserts the *Towler* court "found it significant that other causes of death had not been conclusively disproved." As authority for this proposition, Sauceda-Contreras cites to *Towler, supra*, 31 Cal.3d at page 120. But the *Towler* court there was not discussing the corpus delicti rule, having already rejected defendant's contention there was no evidence from which to draw a reasonable inference death could have been caused by a criminal agency. Instead, the court was addressing the issue of whether there was sufficient evidence to sustain his conviction generally. (*Towler, supra*, 31 Cal.3d at pp. 117-120.)

More importantly, Sauceda-Contreras misrepresents *Towler*. In concluding there was sufficient evidence supporting his conviction, based in part on the same evidence the court relied on to find criminal agency, the court stated, "Although other possible causes of death were not conclusively disproved, given the testimony concerning [defendant's] threats, the timing of [the victim's] disappearance, and the discovery of the body in a location to which [the victim] probably did not go by himself, the trial court

could have rejected as unreasonable the suggested inference that [the victim] had committed suicide or that his death was accidental." (*Id*. at p. 120.) Contrary to Sauceda-Contreras's assertion otherwise, the *Towler* court did not find it so significant as to reverse his conviction for second degree murder. There was sufficient evidence supporting the jury's conclusion Mendoza's death was caused by criminal agency.

B. Premeditation and Deliberation

Sauceda-Contreras asserts insufficient evidence supports the jury's finding he committed murder with premeditation and deliberation and asks we reduce his conviction to second degree murder.

In *People v. Anderson* (1968) 70 Cal.2d 15, the California Supreme Court formulated a framework to aid reviewing courts in analyzing the sufficiency of the evidence to sustain findings of premeditation and deliberation. Three types of evidence are typically relied upon to support an inference of premeditation and deliberation: "(1) facts about how and what defendant did prior to the actual killing which show that the defendant was engaged in activity directed toward, and explicable as intended to result in, the killing—what may be characterized as 'planning' activity; (2) facts about the defendant's *prior* relationship and/or conduct with the victim from which the jury could reasonably infer a 'motive' to kill the victim [and] . . . ; (3) facts about the nature of the killing from which the jury could infer that the *manner* of killing was so particular and exacting that the defendant must have intentionally killed according to a 'preconceived design' to take his victim's life in a particular way for a 'reason' which the jury can reasonably infer from facts of type (1) or (2)." (*Id*. at pp. 26-27.) Courts will sustain findings of premeditation and deliberation where there is evidence of all three types. Otherwise, courts require "at least extremely strong evidence of (1) or evidence of (2) in conjunction with either (1) or (3)." (*Id*. at p. 27.)

Here, we agree with Sauceda-Contreras that the record is bereft of any evidence of planning activity, i.e., evidence of what he did *prior to* killing Mendoza.

However, the record does include evidence from which the jury could reasonably conclude Sauceda-Contreras had a motive to kill Mendoza and the manner of killing, strangulation, demonstrated he had a preconceived design to kill her.

With respect to motive, the jury heard evidence that Mendoza threatened to have Sauceda-Contreras deported. There was evidence Mendoza told Sauceda-Contreras that if he did not get back together with her she would report him to law enforcement. She said he and his family would have to return to Mexico and he would lose his house. Based on this evidence, the jury could certainly conclude Sauceda-Contreras had a motive to kill Mendoza. Although the jury heard his testimony he loved her, Sauceda-Contreras insisted he would not resume their relationship and he chose his family over Mendoza. The possibility of being returned to Mexico and losing his home certainly provided a reason for Sauceda-Contreras to kill Mendoza.

As to the manner of killing, the California Supreme Court has twice stated, "'Ligature strangulation is in its nature a deliberate act.'" (*People v. Hovarter* (2008) 44 Cal.4th 983, 1020 (*Hovarter*); *People v. Bonillas* (1989) 48 Cal.3d 757, 792.) Here, although Juguilon could not ascertain the cause of death, there was evidence from which the jury could reasonably conclude Sauceda-Contreras strangled Mendoza with his belt. Forensic testing revealed Mendoza was a major contributor of DNA found on Sauceda-Contreras's belt. Additionally, the jury heard evidence that nearly two years after the incident, there was still an indentation on the belt approximately 11 inches from the buckle. From this evidence a reasonable juror could conclude Sauceda-Contreras strangled Mendoza with such force and for such a prolonged period of time he intentionally killed her according to a preconceived design.[5]

[5] We conclude there was sufficient evidence the manner of killing established a preconceived design to kill, despite the Attorney General's failure to address the third *Anderson* factor.

Sauceda-Contreras relies on *Hovarter*, *supra*, 44 Cal.4th at pages 1019-1020 [ligature strangulation resulted in death in between five and eight minutes], *People v. Davis* (1995) 10 Cal.4th 463, 510 (*Davis*) [defendant strangled victim for up to five minutes established deliberation], and *People v. Ibarra* (2007) 151 Cal.App.4th 1145, 1147 (*Ibarra*) [defendant had belt around victim's neck for 30 minutes], to argue the manner of killing does not establish premeditation and deliberation because there was no evidence concerning how long he strangled Mendoza. True, there was no evidence concerning the amount of time it took him to strangle Mendoza primarily due to the fact Juguilon could not determine a cause of death. But as we explain above, based on the physical evidence the jury could reasonably conclude he strangled her with such force and for a prolonged duration to demonstrate a preconceived design to kill.

Sauceda-Contreras also relies on *People v. Rowland* (1982) 134 Cal.App.3d 1, to argue there was insufficient evidence of premeditation and deliberation. In *Rowland*, defendant met a woman at a party and took her home. (*Id*. at p. 6.) However, defendant's live-in girlfriend was also home. (*Ibid*.) Defendant told his girlfriend some friends were staying over, and that she should stay in her bedroom. (*Ibid*.) Defendant took the woman into the next bedroom and strangled her with an electrical cord. (*Id*. at pp. 6-7.) The court concluded there was no evidence concerning any of the *Anderson* factors. The court reasoned there was no evidence of planning activity because ensuring his girlfriend did not learn of the victim's presence did not demonstrate an intent to kill. Neither did the use of an electrical cord, an item the court characterized as a normal home object. (*Id*. at p. 8.) The court also concluded there was no evidence of motive, other than an intent to prevent the victim from making any sounds and revealing her presence in the home. (*Id*. at p. 9.) Finally, the court held the manner of killing, ligature strangulation of the victim with an electrical cord "in this case" did not suggest that the defendant had taken "'thoughtful measures' to procure a weapon for use

against the victim[]" apparently because the murder weapon was a normal home object. (*Id*. at pp. 8-9.)

Rowland is inapposite. Although here too there was no evidence of planning activity like in *Rowland*, as we explain above there was evidence of motive and the manner of killing demonstrated a preconceived design to kill. To the extent *Rowland* held the use of a normal household object to kill weighs against a finding of premeditation and deliberation, we disagree. We interpret *Rowland* though as holding that where there was no evidence of planning activity or motive, strangulation with an electrical cord alone does not establish premeditation and deliberation based on the limited facts in that case. Thus, we conclude that although the quantum of *Anderson* type evidence presented might not have been overwhelming, there was sufficient evidence from which premeditation and deliberation could rationally be inferred.

IV. CALCRIM NO. 362

Sauceda-Contreras contends CALCRIM No. 362 violated his federal constitutional rights to due process, a fair trial, and equal protection of the laws. We disagree.

Sauceda-Contreras concedes he did not object to the trial court instructing the jury with CALCRIM No. 362. His failure to object "forfeits the objection on appeal unless [his] substantial rights are affected. [Citations.]" (*People v. Mitchell* (2008) 164 Cal.App.4th 442, 465; § 1259.) Because he contends CALCRIM No. 362 lessens the prosecutor's burden of proof, thus affecting one of his fundamental constitutional rights, we will address the merits of his claim. (*People v. Salcido* (2008) 44 Cal.4th 93, 155.)

Sauceda-Contreras acknowledges the California Supreme Court has approved the giving of CALCRIM No. 362's predecessor instruction, CALJIC No. 2.03. "The inference of consciousness of guilt from willful falsehood or fabrication or suppression of evidence is one supported by common sense, which many jurors are likely

to indulge even without an instruction." (*People v. Holloway* (2004) 33 Cal.4th 96, 142 [addressing CALJIC No. 2.03, "Consciousness of Guilt—Falsehood," CALCRIM No. 362's predecessor]; *People v. Geier* (2007) 41 Cal.4th 555, 589.) However, he argues that because CALCRIM No. 362's language is not identical to CALCJIC No. 2.03's language, its reasoning is not sound and CALCRIM No. 362 creates an "impermissible permissive presumption of guilt." The California Supreme Court has rejected arguments attacking the constitutionality of this instruction (*People v. Howard* (2008) 42 Cal.4th 1000, 1024-1025 [rejecting contention consciousness of guilt instructions like CALCRIM No. 362 invite jury to draw irrational and impermissible inferences regarding defendant's state of mind at time offense committed]), and we do so here.

Sauceda-Contreras concedes he made numerous false statements to firefighters and the police. Therefore, the trial court properly instructed the jury with CALCRIM No. 362. The giving of CALCRIM No. 362 did not implicate Sauceda-Contreras's federal constitutional rights.

V. Cumulative Error

Sauceda-Contreras contends the cumulative effect of the errors requires reversal. We have concluded there were no errors, and thus, his claim has no merit.

VI. Sealed Medical and Police Records

Sauceda-Contreras asks this court to review the following: (1) a subpoena duces tecum for records from the Long Beach Police Department and St. Mary Medical Center concerning Mendoza; and (2) the subpoenaed records. The trial court reviewed the subpoena and the records and found no discoverable information.

We have reviewed the records and there are no discoverable records from the Long Beach Police Department. The records from St. Mary Medical Center do, however, include discoverable information from an event that occurred over eight years before the incident here. The event concerned a psychological episode that might have

provided some support for Sauceda-Contreras's defense. Based on our review of that record however, the incident was too remote and tangential to have had any real impact.

DISPOSITION

The judgment is affirmed.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

IKOLA, J.